

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,	:	
LOCAL 1590,	:	
	:	
Charging Party,	:	
	:	ULP 16-01-1028
v.	:	
	:	PROBABLE CAUSE DETERMINATION
	:	AND ORDER OF DISMISSAL
CITY OF WILMINGTON, DELAWARE,	:	
	:	
Respondent.	:	

APPEARANCES

Jeffrey M. Weiner, Esq., for Charging Party, IAFF Local 1590

Tara M. DiRocco, Esq., Assistant City Solicitor, City of Wilmington

BACKGROUND

The City of Wilmington (City) is a public employer within the meaning of §1602(p) of the Police Officers’ and Firefighters’ Employment Relations Act, 19 Del.C. Chapter 16, (POFERA).

The International Association of Firefighters, (“IAFF”) is an employee organization within the meaning of 1602(g) of the POFERA. By and through its affiliated Local 1590, the IAFF is the exclusive bargaining representative of all uniformed employees of the City of Wilmington Fire Department, except for the Chief and Deputy Chiefs, within the meaning of 19 Del.C. 1602(h).

The City and the IAFF were parties to a collective bargaining agreement which had a term through June 30, 2012. The terms of that agreement remained in effect at all times relevant to the filing of this Charge.

On or about January 19, 2016, the IAFF filed an unfair labor practice charge alleging the City had violated 19 Del.C. §1607(a)(5), which states:

§1607 (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

(5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit.

Specifically, the Charge alleges that the Chief of the Fire Department opens the sealed envelope containing Certification of the Health Care Provider form (which the IAFF believes to be confidential information) before the information is forwarded to the City's Human Resources Department which is responsible for determining eligibility for Family Medical Leave.

The City filed its Answer and New Matter on January 29, 2016, in which it denied the IAFF's assertions and conclusions. Under New Matter the City asserts the Charge is untimely and attaches a copy of the memorandum issued by the Chief of Fire on February 25, 2015. This memo (which was issued nearly a year before the filing of this Charge) advised all firefighters of changes to the process by which medical information would be submitted through the Wilmington Fire Department's chain of command. The City also asserts the Chief has routinely reviewed the Certification of the Health Care Provider forms in order to recommend to the Human Resources Department whether the requested leave should be appropriately approved or denied. It asserts this has been the practice since before the term of the current Chief.

The IAFF filed its response to the City's New Matter on February 8, 2016. It denies the Charge is untimely, arguing it did not become aware of the Chief's practice of reviewing Certification of the Health Care Provider forms until he responded to direct questioning at shift meetings in November, 2015.

This probable cause determination is based upon a review of the pleadings submitted in this matter.

DISCUSSION

Regulation 5.6 of the Rules of the Public Employment Relations Board requires:

- (a) Upon review of the Complaint, the Answer and the Response, the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director's decision in accord with provisions set forth in Regulation 7.4. The Board will decide such appeals following a review of the record, and, if the Board deems necessary, a hearing and/or submission of briefs.
- (b) If the Executive Director determines that an unfair labor practice has, or may have occurred, he shall, where possible, issue a decision based upon the pleadings; otherwise he shall issue a probable cause determination setting forth the specific unfair labor practice which may have occurred.

For purposes of determining whether probable cause exists to support an unfair labor practice charge, factual disputes revealed by the pleadings are considered in a light most favorable to the Charging Party in order to avoid dismissing a valid charge without the benefit of receiving evidence. *Flowers v. DART/DTC*, ULP 04-10-453, V PERB 3179, 3182 (DE.PERB, 2004).

It is well established in Delaware case law developed under the application of the three public sector collective bargaining statutes that matters concerning or related to mandatory subjects of bargaining may not be unilaterally altered by either party without negotiation at least to the point of impasse. Mandatory subjects of bargaining include but are not limited to, "...matters concerning or related to wages, salaries, hours, grievance procedures and working conditions..."¹

¹ "Terms and conditions of employment" means matters concerning or related to wages, salaries, hours, grievance procedures and working conditions; provided, however, that such term shall not include those matters determined by this chapter or any other law of the State to be within the exclusive prerogative of the public employer. 19 *Del.C.* §1302 (n)

PERB has previously held:

The Charging Party must allege facts in the complaint with sufficient specificity so as to, first, allow the Respondent to provide an appropriate answer and second, to provide facts on which PERB can conclude there is a sufficient basis for the charge... The initial burden rests on the Charging Party to allege facts that support the charge that [*the statute*] has been violated. *Sonja Taylor-Bray v. AFSCME Local 2004*, ULP No. 10-01-727, VII PERB 4633 (2010); *Flowers v. Amalgamated Transit Union, Local 842*, ULP No. 10-07-752, VII PERB 4749, 4754 (2010).

When a Charging Party chooses not to include specific information in compliance with Rule 5.2(c)(3), it acts at its peril. *AFSCME Council 81, Local 3911 v. New Castle County*, ULP 09-07-695, VII PERB 4445, 4450 (PERB, 2009).

The instant Charge fails to establish any relationship between the Chief's review of Certification of the Health Care Provider forms in order to recommend either approving or denying leave to firefighters and a mandatory subject of bargaining. The Charge consists of broad-based conclusions unsupported by a clear and detailed statement of the facts constituting the alleged unfair labor practice, as required by PERB Rule 5.2(c).² For this reason the Charge is dismissed, in its entirety.

Finally, the 2001 Pennsylvania Labor Relations Board case³ cited by the IAFF is factually distinguishable on its face and has no precedential value.

² PERB Rule 5.2, Filing of Charges

(c) The charge shall include the following information:

(3) A clear and detailed statement of facts constituting the alleged unfair labor practice, including the names of the individuals involved on the alleged unfair practice, the time, place of occurrence and nature of each particular fact alleged, and reference to the specific provisions of the statute alleged to have been violated. Each fact shall be alleged in a separate paragraph with supporting documentation where applicable.

³ *FOP Lodge No. 10 v. City of Allentown*, 32 PPER P32 (2001).

DETERMINATION

Considered in a light most favorable to Charging Party, the pleadings fail to support a finding of probable cause to believe that a violation of 19 Del.C. §1607(a)(5), as alleged, may have occurred,

WHEREFORE, the Charge is dismissed.

Dated: May 2, 2016



CHARLES D. LONG, JR., Hearing Officer
Del. Public Employment Relations Board